

ASSEMBLY BILL

No. 2561

Introduced by Assembly Member Bradford

February 21, 2014

An act to add Sections 1940.10 and 4356 to the Civil Code, and to add Article 2.10 (commencing with Section 65892) to Chapter 4 of Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2561, as introduced, Bradford. Personal and entrepreneurial agriculture: restrictions.

(1) Existing law regulates the terms and conditions of residential tenancies, and prohibits a landlord from interfering with a tenant's quiet enjoyment of the premises.

This bill would require a landlord to permit a tenant to participate in personal agriculture or entrepreneurial agriculture in portable containers in the tenant's private area, as defined, as long as specified conditions are met.

(2) Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates common interest developments and authorizes the governing board of the homeowners' association that manages the development to adopt and amend the operating rules for the development.

This bill would make void any provision of the governing documents of a common interest development that prohibits the use of a homeowner's front or back yard for personal agriculture or entrepreneurial agriculture or prohibits a homeowner from the off-site sale or donation of produce grown on the homeowner's property.

(3) The Planning and Zoning Law requires the legislative body of a city or county to adopt a comprehensive, long-term general plan that includes various elements, including a land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land.

This bill would provide that a city, county, or city and county may not prohibit personal agriculture, a community garden, or entrepreneurial agriculture, as defined, within its jurisdiction, notwithstanding a zoning ordinance to the contrary, but may subject these activities to specified requirements. This bill would also require each land use zone within a city, county, or city and county to be considered zoned for entrepreneurial agriculture, unless a local governmental agency, city council, or board of supervisors determines that growing plant crops for human consumption within a particular area within its jurisdiction would pose a significant public health risk. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California industrial agriculture is at risk due to water
- 4 shortages, soil degradation, pollution, environmental, and structural
- 5 threats to the San Francisco Bay Delta, and the rising cost of oil.
- 6 Providing Californians with the capacity to feed themselves and
- 7 their communities would drastically improve local food security

1 and mediate the risks of water, soil, environmental, or fuel-related
2 crises.

3 (b) Although California is the “bread basket” of the United
4 States and has regions of climate and land ideal for agriculture, a
5 significant amount of California’s food is grown hundreds or
6 thousands of miles from where it is consumed. This results in high
7 transportation costs, energy consumption, and lost economic
8 opportunity for our state. Even food grown in the heart of
9 California’s farming region is expensive to disperse to the rest of
10 the state due to rising fuel costs.

11 (c) California is no exception to rising obesity and
12 obesity-related diseases in the United States. Two-thirds of
13 American adults and nearly one-third of American children are
14 obese or overweight, putting them at risk for developing chronic
15 diseases, including diabetes, heart disease, or cancer. In California,
16 one in every nine children, one in three teens, and over one-half
17 of adults are already overweight or obese. This epidemic affects
18 virtually all Californians. Many of these health conditions are
19 preventable and curable through lifestyle choices that include
20 consumption of healthy fresh foods.

21 (d) One of every \$10 dollars spent on health care in the United
22 States goes toward treating diabetes and its complications.
23 Facilitating opportunities for California residents to grow and
24 consume fresh, healthy foods will promote lifestyles and diets that
25 benefit individuals and communities, as well as being a more
26 effective use of public moneys.

27 (e) Many homeowners’ associations have rules prohibiting
28 homeowners from growing food in front yards or from selling food
29 grown on the property.

30 (f) Additionally, 40 percent of Californians live in residences
31 that they do not own, and may, as a result of lease restrictions or
32 disapproval by the landlord, face limitations on their ability to
33 grow food on the land where they reside.

34 (g) Providing Californians with increased opportunity to
35 participate in small-scale entrepreneurial agriculture will
36 supplement incomes during times of high unemployment and
37 underemployment and stimulate local economies.

38 (h) Lawncare is resource intensive, at no nutritional gain. Lawns
39 are the largest irrigated crop in the United States. In the urban areas
40 in the United States, 30 to 60 percent of residential water is used

1 for watering lawns. In arid and semiarid regions, this figure can
2 reach up to 75 percent. Annually, 67 million pounds (33,500 tons)
3 of synthetic pesticides are used on lawns in the United States.
4 Furthermore, lawnmowers use 580 million gallons of gasoline
5 yearly. These resources could be allocated to more productive
6 activities, including growing food, thus increasing access to healthy
7 options for low-income individuals.

8 (i) Gardens and agriculture on public lands help communities
9 increase their access to fresh fruits and vegetables, enhance urban
10 landscapes, motivate healthier eating, and connect neighborhoods.

11 (j) Potential civil liability for misuse of community garden
12 facilities makes some public entities cautious about devoting public
13 lands to community gardens or about expanding existing gardens
14 to include fruit trees.

15 SEC. 2. Section 1940.10 is added to the Civil Code, to read:

16 1940.10. (a) For purposes of this section, the following terms
17 are defined as follows:

18 (1) “Common area” means an area of the property that is shared
19 with other tenants.

20 (2) “Private area” means an area of the property that is for the
21 exclusive use of a tenant.

22 (b) A landlord shall permit a tenant to participate in personal
23 agriculture or entrepreneurial agriculture in portable containers in
24 the tenant’s private area as long as the following conditions are
25 met:

26 (1) The tenant regularly removes any dead plant material and
27 weeds, unless the landlord and tenant have a preexisting or separate
28 agreement regarding garden maintenance where the tenant is not
29 responsible for removing dead plant material and weeds.

30 (2) The placement of the containers does not interfere with any
31 tenant’s parking spot.

32 (3) The placement of the containers does not create a
33 trip-and-fall hazard, block doorways, or block access to utility
34 panels.

35 (4) The placement of the containers does not cause water or
36 other damage to the property.

37 (c) If the containers are to be placed on top of grass, a landlord
38 may require the tenant to replant grass prior to vacating the
39 property.

1 (d) The cultivation of food on the rental property other than that
2 which is contained in portable containers shall be subject to
3 approval from the landlord.

4 (e) A landlord may prohibit the cultivation of any sort by tenants
5 on common areas.

6 (f) With the exception of container plants on paved areas, a
7 landlord may choose to require an additional security deposit to
8 ensure that all landscaping is restored after the tenant vacates the
9 property or ceases to engage in food cultivation. The security
10 deposit shall not exceed the cost of anticipated restoration costs
11 in the event that the tenant does not restore the landscaping.

12 (g) A landlord may require the tenant to enter into a written
13 agreement regarding the payment of any excess water and waste
14 collection bills stemming from the garden.

15 (h) A landlord has a right to periodically inspect the garden area
16 to ensure compliance with the above rules.

17 (i) A landlord may not prevent tenants from selling or donating
18 products derived from this gardening at an off-site location.

19 SEC. 3. Section 4356 is added to the Civil Code, to read:

20 4356. (a) Notwithstanding any other law, a provision of any
21 of the governing documents of a common interest development
22 shall be void and unenforceable if it does either of the following:

23 (1) Prohibits, or includes conditions that have the effect of
24 prohibiting, the use of a homeowner's front or back yard for
25 personal agriculture or entrepreneurial agriculture.

26 (2) Prohibits, or includes conditions that have the effect of
27 prohibiting, a homeowner from the off-site sale or donation of
28 produce grown on the homeowner's property.

29 (b) This section applies only to yards that are designated for the
30 exclusive use of the homeowner.

31 (c) This section shall not prohibit a homeowners' association
32 from applying rules and regulations restricting on-site sale of
33 agricultural products.

34 (d) This section shall not prohibit a homeowners' association
35 from applying rules and regulations restricting the hours of
36 operation and the number of visitors to gardens within the
37 homeowners' association. These rules and regulations shall be
38 reasonable and not undermine the ability of the homeowner to
39 operate the personal agriculture or entrepreneurial agriculture to
40 operate efficiently. Rules and regulations that restrict the hours of

operation, number of visitors, and the frequency of visits shall not be substantially different from similar restrictions affecting hours of operation, or visitors to homeowner activities, such as outdoor birthday parties or recreational activities.

(e) This section shall not prohibit a homeowners' association from applying rules and regulations requiring that dead plant material and weeds, with the exception of straw, mulch, compost, and other organic materials intended to encourage vegetation and retention of moisture in the soil, are regularly cleared from the front yard.

SEC. 4. Article 2.10 (commencing with Section 65892) is added to Chapter 4 of Division 1 of Title 7 of the Government Code, to read:

Article 2.10. Personal and Entrepreneurial Agriculture

65892. (a) For purposes of this article, the following definitions shall apply:

(1) "Community garden" means a use of land managed by a public entity, nonprofit organization, person, or group of individuals to cultivate edible plant crops for donation or for personal use by those cultivating the land.

(2) "Entrepreneurial agriculture" means a use of land managed by a public entity, nonprofit organization, business entity, individual, or group of individuals to cultivate edible plant crops for the purpose of sale or donation.

(3) "Personal agriculture" means a use of land where an individual cultivates edible plant crops for personal use or donation as an accessory or a primary use of property.

(4) "Plant crop" means any crop in its raw or natural state, which comes from a plant. It shall not include marijuana or any other unlawful crops or substances.

(b) A city, county, or city and county shall not prohibit personal agriculture, a community garden, or entrepreneurial agriculture within its jurisdiction, notwithstanding a zoning ordinance to the contrary. However, a city, county, or city and county may, by ordinance, adopt the following restrictions on any of these agricultural activities in a residential or commercial zone:

(1) Reasonable restrictions pertaining to the presence of dead plant material in a front yard, except that a city, county, or city

1 and county shall not restrict the use of dead plant material to be
2 used as ground cover, mulch, or compost.

3 (2) Restrictions on the cultivation and placement of plants that
4 may interfere with a public sidewalk.

5 (3) Restrictions on structures for community gardening that do
6 not meet the same building standards applicable to accessory
7 structures within the zone.

8 (4) Retail sales at the site where plant crops are grown and all
9 other public use of the site or number of retail visitors. The
10 restrictions on hours of retail sales operation shall be reasonable
11 and not undermine the ability of the community garden,
12 entrepreneurial agriculture, or personal agriculture to operate
13 efficiently. Rules and regulations that restrict the number of retail
14 visitors, and the frequency of these visits, shall not be substantially
15 different from similar restrictions affecting the number of visitors
16 to other on-site activities, such as garage sales or holiday picnics.

17 (5) Restrictions on commercial deliveries and pickups that may
18 be limited to no less than once per day. On-site sales shall not be
19 considered commercial pickups.

20 (6) Restrictions on odor, noise, and dust caused by growing
21 produce and that affect home occupancy or cause a nuisance.

22 (c) Each land use zone within a city, county, or city and county
23 shall be considered zoned for entrepreneurial agriculture, unless
24 a local governmental agency, city council, or board of supervisors
25 determines that growing plant crops for human consumption within
26 a particular area within its jurisdiction would pose a significant
27 public health risk. If growing crops in a particular area is
28 determined to present a public health risk, this area shall be clearly
29 delineated on a map and the public health risk specific to that area
30 shall be documented. The map and documentation of any specific
31 public health risk shall be available to the general public.

32 SEC. 5. If the Commission on State Mandates determines that
33 this act contains costs mandated by the state, reimbursement to
34 local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.